

SERVED: October 25, 2001

NTSB Order No. EA-4918

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of October, 2001

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-16036
v.)	
)	
NACER EDDINE FETAIMIA,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent appeals the oral initial decision of Administrative Law Judge William R. Mullins, rendered after an evidentiary hearing held on November 21, 2000.¹ By that decision, the law judge affirmed the Administrator's finding that respondent violated sections 91.9(a) and 91.13(a) of

¹ An excerpt from the hearing transcript containing the initial decision is attached.

the Federal Aviation Regulations ("FARs"),² by flying an aircraft requiring two pilots by himself, and affirmed the 30-day suspension of respondent's Airline Transport Pilot ("ATP") certificate imposed by the Administrator.

Respondent timely filed a notice of appeal on November 27, 2000, and an appeal brief on March 9, 2001. The Administrator filed a reply brief on April 9, 2001. For the reasons discussed below, we affirm the law judge's decision.

The facts are largely undisputed, and the sole issue before the law judge was whether, as alleged, respondent flew the aircraft without a required second pilot onboard. At the hearing, evidence was presented that respondent was confronted by Mr. Robert Johnson, a mechanic who, holding a

² FAR sections 91.9 and 91.13, 14 C.F.R. Part 91, state in pertinent part:

§ 91.9 Civil aircraft flight manual, marking, and placard requirements.

- (a) [N]o person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane...Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

* * *

§ 91.13 Aircraft operations for the purpose of air navigation.

- (a) No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

* * *

mechanic's lien against respondent's Cessna Citation CE-500 jet aircraft, N501AT, for an unpaid maintenance bill, had come to seize the aircraft. When respondent refused to surrender it, the mechanic and a companion, Mr. James Nelson, on advice previously received from Mr. Johnson's attorney, ceased the attempt. Shortly thereafter, according to their testimony, Mr. Johnson and Mr. Nelson saw respondent enter the aircraft by himself, taxi it from its parking place directly to a nearby runway, and take off. The two also testified that when they first went to the airplane it was locked, that during their long period of observation prior to its flight they did not observe anyone but respondent enter the aircraft, and, aware that this model aircraft requires a crew of two pilots,³ reported their observation to the FAA. Transcript (Tr.) at 53, 54.

Respondent denies he flew the airplane alone, and claims he had a student pilot, Mr. Malik Chehati, aboard. Tr. at 106, 111-117. An FAA investigator testified that respondent told him that he had taxied the aircraft to the other end of the airport to pick up a student. The investigator also testified that Mr. Chehati told him that he had boarded the aircraft at its parking spot, not at the

³ "Minimum Flight Crew for All Operations...1 Pilot and 1 Copilot." Cessna Citation CE-500 Approved Aircraft Flight Manual, Section H, Operating Limitations, Page 2-11-2. Exhibit C-3.

other end of the airport. Tr. at 70, 72. At the hearing, and contrary to what he allegedly told the investigator, respondent testified that Mr. Chehati boarded the aircraft at its parking spot. Tr. at 111-114, 151-155.

At the conclusion of the hearing, after summarizing the exhibits and testimony, the law judge summed up his responsibility as having "to look at the testimony of Mr. Nelson and Mr. Johnson and compare it with the testimony of Mr. Fetaimia and Mr. Chehati and determine which has the most credibility." Tr. at 202. Finding the testimony of the Administrator's witnesses more credible than respondent's, the law judge upheld the violations of FAR sections 91.9(a) and 91.13(a), and the 30-day suspension of respondent's ATP certificate.

On appeal, respondent contends, essentially, that the law judge's assessment of the evidence was erroneous, and urges that, in order to "determine whether testimony is 'inherently incredible,' the Board must look beyond the administrative law judge's credibility determination to the substance of the testimony." The Administrator urges us to uphold the law judge's decision.

It is well-established Board precedent that making a credibility determination is within the exclusive province of the law judge, so long as the determination is not made in an arbitrary or capricious manner. See, e.g.,

Administrator v. Smith, 5 NTSB 1560, 1563 (1986). Having considered respondent's argument we fail to discern any basis to disturb the law judge's assessment of the conflicting evidence, including his credibility determinations that reflect disbelief of respondent's claim that there was a second-in-command aboard the aircraft.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision and the Order of Suspension are affirmed; and
3. The 30-day suspension of respondent's ATP certificate shall begin 30 days after the service date indicated on this opinion and order.⁴

CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order. BLAKEY, Chairman, did not participate.

⁴ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).